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## Franchising – Transaction Criteria development update

**A**s mentioned in previous editions of FOCUS, the Board's franchise transaction criteria are being reviewed and updated throughout 1997.

A project team made up of the Board's caseworker/ auditors from various Area Offices is reviewing and updating each set of transaction criteria by franchise category. Where possible, the scope of work covered is also being extended so that we can introduce new criteria in areas not previously auditable. This project team has been working in close consultation with the profession; thank you to those of you who have been involved, from our perspective this has proved both effective and rewarding.

Drafts of transaction criteria for the Consumer and General Contract, Debt, Employment and Immigration franchise categories have all reached final draft stage and are with The Law Society, relevant practitioner associations, network organisations and practitioners for consultation.

The Contract transaction criteria now include a set covering poor workmanship and building disputes and the Debt transaction criteria have been expanded to cover a broader range of debt scenarios. Areas of work covered by the Employment transaction criteria now include instances of unauthorised deductions from wages, and in the Immigration category, leave to enter and leave to remain have been separated to cover many more cases. This extension in the scope of work covered will mean a broader range of the work you do can be audited.

Updated criteria in existing areas will replace the current sets from November 1997, and audit scores will count towards category compliance immediately. New sets covering areas of work not previously covered will be introduced on a pilot basis, initially for six months, and audit scores will be recorded separately from those counting towards category compliance. Copies of the new Consumer and General Contract, Debt, Employment and Immigration transaction criteria will be available from your local Area Office from mid-October.

Any comments or questions should be sent to Louise Collins, Franchise Development

Manager, Franchise Development Group, Legal Aid Board, 85 Gray's Inn Road, London WC1X 8AA (DX328 London).

## New Mental Health franchise category

In the March issue of FOCUS (17th Issue), we outlined a programme to introduce a new franchise category in Mental Health. We invited practitioners to be involved in the necessary development.

The response was very encouraging and helpful and we hope to introduce the new category in the near future. Assistance from the profession means that we are now in a position to consult with The Law Society over details of the category scope, and related devolved powers, financial incentives and supervisor standards.

Information packs, outlining the franchise requirements for Mental Health together with guidance on how to make an application, will be available in your local area office from late October.

If you are interested in applying for a franchise in the new Mental Health category, you are advised to contact your local area office towards the end of October. If you do not have a franchise contract in one of the existing areas of law, you are advised to request a copy of the Franchising Specification (Second Edition). This sets out the principles on which franchising is based, and provides details of the mandatory requirements which relate to all franchise categories of work.





# Legal Aid Handbook 1997-98

The new edition of the Legal Aid Handbook will be available shortly.

It can be ordered direct from the publishers, Sweet & Maxwell, on their telephone order line - 01264 342899. The price is £13.00.

The statutory and reference material has been updated and the Notes for Guidance have, following consultation, been amended to include guidance on ABWOR for fine and other defaulters in the Magistrates' Courts, as well as the Board's guidance on emergency applications/certificates, which has applied since April 1997.

Information is included on the Board's new computer system, CIS, where appropriate.

## Note to Solicitors Annual Reports on Case

In April 1997, the Legal Aid Board ceased the production of the form CCI (Report on case and claim for payment on account under Regulation 100). Since the form CCI included the application for a payment on account under Regulation 100, to enable solicitors to move towards generating their own requests, the Board produced a new form, CLA28A. This was for immediate use for claims made on or after 1 April 1997; it should be returned to Area Offices. Please note that firms submitting claims to the Nottingham office are required to use form CLAIM4, because of the new computer system.

As part of the transitional arrangements, a final set of CCI's was sent out to cover the period up to April 1997. To ease the transition for solicitors to a diarised system, the Board produced a list for each firm of those cases eligible for a payment under the scheme for the six months from April 1997 (please note that this did not include emergency certificates). Thereafter solicitors were to be responsible for generating their own requests without reminders being sent.

In response to a request from the Law Society, the Legal Aid Board has agreed to produce a further final list of certificates where claims may be made over the six months to 31 March 1998 and these listings are being sent out over August and September to all firms. Please ensure that you have procedures in place to diarise the making of claims after that date.

If you have any queries on these arrangements please telephone your local Area Office.

## New forms for giving notice of issue, extension/amendment and discharge/revocation of civil legal aid certificates

The Board has approved new forms for giving notice of issue, extension/amendment and discharge/revocation of civil legal aid certificates and a new associated Note for Guidance. These also appear in the new Legal Aid Handbook 1997/98. The new forms must be used from 1 December 1997 but may be used before then. The main changes to the forms previously in use are the inclusion of more information notes and the requirement to state the date of expiry (if any) of an emergency legal aid certificate.

### NOTE FOR GUIDANCE

#### Notices of Issue, Extension/Amendment and Discharge/Revocation

A solicitor acting for an assisted person must, without delay and in the approved form, serve:

Notice of issue of (emergency) legal aid certificate - in accordance with reg. 50 Civil Legal Aid (General) Regulations 1989;

Notice of an extension/amendment of (emergency) legal aid certificate - in accordance with regs. 25 and/or 54 Civil Legal Aid (General) Regulations 1989;

Notice of discharge or revocation of (emergency) legal aid certificate - in accordance with reg. 82 Civil Legal Aid Regulations 1989;

when any of these events occurs.

Notices have to be served to ensure that the assisted person's opponent is aware of the assisted person's legal aid status and the proceedings for which legal aid has been granted and (in appeal cases only) is aware of all limitations (except costs limitations) on the legal aid certificate - see *Scarth v Jacobs-Paton* (1978) *The Times*, November 1).

### LEGAL AID BOARD LEGAL AID ACT 1988 Regulation 50 Civil Legal Aid (General) Regulations 1989 NOTICE OF ISSUE OF [EMERGENCY] CERTIFICATE

No. \_\_\_\_\_  
In the \_\_\_\_\_  
[County Court] [Division]  
Between \_\_\_\_\_ [Applicant] [Plaintiff] [Petitioner]  
and \_\_\_\_\_ [Defendant] [Respondent]  
TAKE notice that [an Emergency] [a Legal Aid] Certificate No. \_\_\_\_\_  
dated the \_\_\_\_\_ day of \_\_\_\_\_ 199  
has been issued in Legal Aid Area No. \_\_\_\_\_ to \_\_\_\_\_  
who, since that date, has been an assisted person.

The description/scope of legal aid is: \_\_\_\_\_

Appeal cases only - the limitation (if any) [costs limitations need not be disclosed] is: \_\_\_\_\_

Emergency certificates only - the emergency certificate [has] [has not] been granted for a specified period. [It will expire on]: \_\_\_\_\_

#### NOTE TO ASSISTED PERSON'S SOLICITOR

1. This notice must be served in accordance with reg. 50 Civil Legal Aid (General) Regulations 1989.

#### NOTES TO OPPONENT OR OPPONENT'S SOLICITOR

1. An assisted person's solicitor must notify the Legal Aid Area Office which issued the assisted person's legal aid certificate if a legal aid certificate is issued to another party to the proceedings - reg. 70 Civil Legal Aid (General) Regulations 1989.
2. All monies payable to the assisted person must be paid to his/her solicitor or, if s/he is no longer represented by a solicitor, to the Legal Aid Board. This is so even if his/her certificate has been discharged or revoked. Only the solicitor or the Legal Aid Board is capable of giving a good discharge for monies so payable - reg. 87 Civil Legal Aid (General) Regulations 1989.

Occasionally, the description of legal aid, on a legal aid certificate, may not fully reveal the scope of the legal aid. For example, the description of legal aid may be "to defend and to counterclaim in proceedings etc" and the limitation may be "limited to representation on the counterclaim". In these circumstances, the opponent should, in all cases, be made aware of the true scope of legal aid cover - whether by revealing the limitation or by ensuring that the true scope is specified in the description/scope section of the appropriate notice.

The Board will be considering whether assisted persons should be required to give notice of all limitations (including procedural limitations) in all cases eg notice of "limited to counsel's opinion" or "limited to all steps up to close of pleadings". The Board will be consulting widely on this. If such a change is made, the approved forms will be amended.

The forms currently approved by the Board (and which must be used from 1 December 1997) for giving:

- (1) notice of issue of [emergency] certificate;
  - (2) notice of extension/amendment of [emergency] certificate; and
  - (3) notice of discharge or revocation of [emergency] certificate;
- are set out here. They include important information for assisted persons' solicitors and for opponents or opponents' solicitors.

### LEGAL AID BOARD LEGAL AID ACT 1988 Regulations 25 and 54 Civil Legal Aid (General) Regulations 1989 NOTICE OF EXTENSION/AMENDMENT [EMERGENCY] CERTIFICATE

No. \_\_\_\_\_  
In the \_\_\_\_\_  
[County Court] [Division]  
Between \_\_\_\_\_ [Applicant] [Plaintiff] [Petitioner]  
and \_\_\_\_\_ [Defendant] [Respondent]  
TAKE notice that [the Emergency] [the Legal Aid] Certificate No. \_\_\_\_\_  
dated the \_\_\_\_\_ day of \_\_\_\_\_ 199  
which was issued in Legal Aid Area No. \_\_\_\_\_ to \_\_\_\_\_  
was amended on the \_\_\_\_\_ day of \_\_\_\_\_ 199

The amended description/scope of legal aid is: \_\_\_\_\_

Appeal cases only - the amended limitation (if any) [costs limitations need not be disclosed] is: \_\_\_\_\_

Emergency certificates only - the period allowed for the duration of the emergency certificate has been extended. It will now expire on: \_\_\_\_\_

#### NOTE TO ASSISTED PERSON'S SOLICITOR

1. This notice must be served in accordance with regs. 25 and/or 54 Civil Legal Aid (General) Regulations 1989.

#### NOTES TO OPPONENT OR OPPONENT'S SOLICITOR

1. An assisted person's solicitor must notify the Legal Aid Area Office which issued the assisted person's legal aid certificate if a legal aid certificate is issued to another party to the proceedings - reg. 70 Civil Legal Aid (General) Regulations 1989.
2. All monies payable to the assisted person must be paid to his/her solicitor or, if s/he is no longer represented by a solicitor, to the Legal Aid Board. This is so even if his/her certificate has been discharged or revoked. Only the solicitor or the Legal Aid Board is capable of giving a good discharge for monies so payable - reg. 87 Civil Legal Aid (General) Regulations 1989.

### LEGAL AID BOARD LEGAL AID ACT 1988 Regulation 82 Civil Legal Aid (General) Regulations 1989

#### NOTICE OF DISCHARGE OR REVOCATION OF [EMERGENCY] CERTIFICATE

No. \_\_\_\_\_  
In the \_\_\_\_\_  
[County Court] [Division]  
Between \_\_\_\_\_ [Applicant] [Plaintiff] [Petitioner]  
and \_\_\_\_\_ [Defendant] [Respondent]

TAKE notice that [the Emergency] [the Legal Aid] Certificate No. \_\_\_\_\_  
dated the \_\_\_\_\_ day of \_\_\_\_\_ 199  
which was issued in Legal Aid Area No. \_\_\_\_\_ to \_\_\_\_\_  
was [discharged] [revoked] on the \_\_\_\_\_ day of \_\_\_\_\_ 199

#### NOTE TO ASSISTED PERSON'S SOLICITOR

1. This notice must be served in accordance with reg. 82 Civil Legal Aid (General) Regulations 1989.

#### NOTES TO OPPONENT OR OPPONENT'S SOLICITOR

1. All monies payable to the assisted person must be paid to his/her solicitor or, if s/he is no longer represented by a solicitor, to the Legal Aid Board. This is so even if his/her certificate has been discharged or revoked. Only the solicitor or the Legal Aid Board is capable of giving a good discharge for monies so payable - reg. 87 Civil Legal Aid (General) Regulations 1989.



# Domestic Violence and Harassment – Part IV Family Law Act 1996 and Protection from Harassment Act 1997

## The New Law and Guidance

With effect from 1 October 1997 the law relating to domestic violence is to be rationalised and codified by the implementation of Part IV Family Law Act 1996. The implementation of the Protection from Harassment Act 1997 in June 1997 is also of relevance. The Board is issuing new guidance in the light of the new law. That guidance has been consulted upon with practitioner groups and will be the subject of local training in the area offices.

The guidance, which relates to both ABWOR and civil legal aid, will be applied to initial applications and subsequent amendments.

The guidance is being published both through Focus and an update to the Board's Guidance: Exercise of Devolved Powers, which is being issued to franchisees.

The guidance does not detract from the application of the merits test but is intended to assist caseworkers and practitioners in the application of the test to particular types of cases.

The guidance gives an indication of when applications are likely to be granted/refused, as well as indicating factors which need to be considered in relation to particular types of cases in applying the merits test. Applications will be expected to address the issues raised by the guidance otherwise they are likely to be refused in the absence of further information.

The guidance from the Guidance: Exercise of Devolved Powers, which is reproduced in full below indicates, in the Explanatory Notes, the circumstances in which certificates may or may not be amended, as well as the scope of cover available without the need for a specific amendment. It also amends the franchise categories so as to take the new law into account and in particular to add certain proceedings under the Protection from Harassment Act 1997 to the family/matrimonial, personal injury and housing categories (although disputes between neighbours do not fall within any franchise category).

It is important that practitioners familiarise themselves with the extent of cover as obviously this will need to be considered on taxation/costs assessment.

## Transitional Arrangements

### Forms

The application forms for civil legal aid and ABWOR will, so far as is relevant, be amended to take the new law into account. In the interim, practitioners should use the existing forms, ABWOR 1, CLA1 (for Protection from Harassment Act proceedings), and CLA2 (for Part IV **and** other family proceedings) or CLA5 (for Part IV **and** free-standing Children

Act proceedings) for non-CIS offices and APP4, APP1 and APP2 for CIS offices. The Explanatory Notes below make it clear which form should be used in any particular case.

### Offers and certificates

Offers and certificates (other than those issued in relation to offers which are pending) will, from **29 September 1997** reflect the implementation of Part IV Family Law Act 1996 by referring to the new provisions. Applications made in respect of proceedings under provisions which will be repealed with effect from 1 October will be treated as referring to the new provisions of the Family Law Act. This will enable applications to be dealt with without delay and will also enable practitioners to issue proceedings under the new law immediately it comes into force.

### Existing certificates

Existing certificates which cover proceedings under legislation which is repealed will not require amendment to allow for the implementation of the new legislation.

Where proceedings have already been issued, then those proceedings will continue to be covered. Where proceedings are yet to be issued, proceedings under Part IV Family Law Act 1996 will be covered. That is to say certificates which are issued in respect of proceedings under the Domestic Violence and Matrimonial Proceedings Act 1976, Sections 16 to 18 of the Domestic Proceedings and Magistrates' Courts Act 1978 and/or Sections 1 and 9 of the Matrimonial Homes Act 1983 will, where an application for an order or injunction is not already pending immediately before the commencement of the repeal of that legislation, be treated by the Board as covering an application for a non-molestation order and/or occupation order – in the case of certificates/ABWOR approvals covering “an injunction in family proceedings” or “an application for a protection and exclusion order” – but a non-molestation order only in the case of certificates/ABWOR approvals covering “a non-molestation order in family proceedings” or “an application for a protection order”.

Where a certificate covers assault and trespass but proceedings have not yet been issued the certificate will be treated by the Board as covering assault/trespass or an application for a non-molestation order under Part IV Family Law Act 1996 so that the practitioner can commence Part IV proceedings without seeking an amendment. A specific amendment would, however, be required to cover an occupation order or proceedings under the Protection from Harassment Act 1997.

A certificate will only cover proceedings under the



Protection from Harassment Act 1997 to the extent that the certificate wording actually states this. An existing non-family certificate cannot be amended to cover proceedings under the Protection from Harassment Act 1997 where proceedings have already been issued as, except in family proceedings, a certificate cannot cover more than one action, cause or matter (Regulation 46(3) Civil Legal Aid (General) Regulations 1989).

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## **GUIDANCE**

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### **FAMILY/MATRIMONIAL**

#### **7. INJUNCTIONS – PART IV FAMILY LAW ACT 1996/PROTECTION FROM HARASSMENT ACT 1997**

##### **7.1 Explanatory Notes**

7.1.1 The Board will not require proceedings under Part IV to be commenced/conducted in any particular venue. Applications for leave by children will in any event be required by the procedural rules to be made to the High Court and applications will be required to be made to the Court which is already dealing with other family proceedings.

7.1.2 Where there is an existing certificate capable of amendment to cover proceedings under Part IV Family Law Act 1996 an application for an amendment rather than a fresh certificate should be made.

7.1.3 Any certificate covering proceedings under Part IV will cover obtaining a final order including, if appropriate, applying for an ex parte order prior to that.

7.1.4 Any application for an extension, variation or discharge will not be covered unless this is specified, either by an amendment to an existing certificate or by a new certificate.

7.1.5. Certificates will generally cover a non-molestation order and/or occupation order although, where appropriate, certificates will be issued covering a non-molestation order only. Solicitors seeking cover to apply for an order will be expected to consider to what extent the remedy sought is available within the provisions of Part IV and whether the application to the court is likely to succeed, having regard to the factors required to be considered by the court.

7.1.6 An occupation order may impose financial obligations. Although the scope of the certificate will extend to

those aspects without the need for a specific amendment, solicitors should not overlook the possible operation of the statutory charge. Any recovery or preservation in proceedings under Part IV is neither exempt nor capable of postponement of enforcement. Practitioners should also be aware of the decision in *Manley -v- The Law Society* [1981] 1 WLR 335. It would be reasonable to expect substantial ancillary issues to be adjourned for consideration in other more appropriate proceedings e.g. ancillary to divorce/judicial separation.

7.1.7 Where an order made under Part IV, including a power of arrest, is breached, cover for both the applicant and respondent extends to representation on the consideration of the breach by the court following exercise of the power of arrest. However, cover does not, without a specific amendment, extend to applying for the issue of a warrant of arrest (where a power of arrest has not been attached to the order) nor to representation for either party in contempt of court proceedings. In the event of an application for an amendment relevant factors would be the extent of any alleged breach and the likelihood of success in the proceedings, given all the facts and circumstances of the case.

7.1.8 A respondent's certificate, which covers representation on arrest, either following the exercise of a power of arrest or the execution of a warrant, will also extend to applying for bail and to representation on any adjourned hearing. Likewise, the applicant's certificate once extended to cover the application for the issue of a warrant/to commit will cover representation as to bail and at any adjourned hearing.

7.1.9 A single certificate cannot cover family proceedings (including proceedings under Part IV) and proceedings under the Trusts of Land and Appointment of Trustees Act 1996, nor family proceedings and proceedings under the Protection from Harassment Act 1997. A single certificate can, however, cover proceedings under Part IV and other family proceedings (Regulation 46(3) Civil Legal Aid (General) Regulations 1989).

7.1.10 Proceedings under Part IV will not be sufficiently related to proceedings under Sections 31, 43, 44 or 45 Children Act 1989 (Care/Supervision Proceedings) for legal aid cover to be available under a non-means, non-merits tested or means tested only certificate. A separate means and merits tested civil legal aid application will be



necessary unless the court makes an order of its own motion without an application for an order having been made. If the court makes an order of its own motion with a return date then no amendment is necessary to cover representation on the return date and any adjournment.

7.1.11 Proceedings in relation to an exclusion requirement in emergency protection order proceedings or proceedings culminating in an interim care order are within a non-means, non-merits tested or means tested only certificate covering the main proceedings. No specific amendment is required e.g. in the event of a power of arrest being exercised or a variation or discharge of the order being sought. An excluded person can apply in the usual way for a means and merits tested certificate to vary or discharge an exclusion requirement, but legal aid is unlikely to be granted unless in the particular circumstances of the case, the application to the court is justified and stands a reasonable prospect of success. Where a certificate is issued it covers, following exercise of the power of arrest, without a specific amendment, representation on the consideration of the breach by the court.

7.1.12 Proceedings under Part IV fall within the family/matrimonial franchise category but this does not extend to advice and assistance/legal aid applications by mortgagees or landlords. Representation of mortgagees/landlords served with proceedings under Part IV does not fall within any franchise category. The family application form APP2 (non-CIS CLA2/CLA5) or, in the case of ABWOR, APP4 (non-CIS ABWOR1) must be used for proceedings under Part IV. The non-matrimonial form APP1 (non-CIS CLA1) must not be used.

7.1.13 Proceedings under the Protection from Harassment Act 1997 fall within the family/matrimonial franchise category but only where there is a family context (defined by reference to associated persons under Part IV Family Law Act 1996) and only nominal damages/an injunction (as opposed to substantive damages) are sought. The non-matrimonial application form APP1 (non-CIS CLA1) must be used.

7.1.14 Proceedings under the Protection from Harassment Act 1997 fall within the personal injury franchise category where substantive damages are being sought but not where no or only nominal damages are being sought (i.e. where the main remedy sought is the protection of an injunction rather than the award of damages). The non-matrimonial application form APP1 (non-CIS CLA1) must be used.

7.1.15 Proceedings under the Protection from Harassment Act 1997 between landlords and tenants fall within the housing franchise category. This does not, however, extend to family disputes which fall within the family/matrimonial franchise category nor to disputes between tenants or neighbours which do not fall into any franchise category. The non-matrimonial application form APP1 (non-CIS CLA 1) must be used.

7.1.16 Due to the provisions of the Interpretation Act 1978, ABWOR is available for proceedings under Part IV where Part IV replaces the provisions for protection/exclusion orders under Part I of the Domestic Proceedings and Magistrates' Courts Act 1978. ABWOR, where available, is likely to be granted/refused in the same circumstances as civil legal aid.

7.1.17 Where both ABWOR and civil legal aid are available, as for proceedings under Part IV, the area offices will not seek to refuse applications for ABWOR on the basis that civil legal aid should be applied for. ABWOR will generally be the choice because it is simpler. However, there are different eligibility and contribution regimes for civil legal aid and ABWOR and the Board will not force a client to apply for ABWOR if that would lead to higher contributions than civil legal aid. ABWOR is as usual only available for proceedings in the family proceedings court.

## 7.2 **Part IV Family Law Act 1996 – Non-Molestation Orders**

Relevant Notes for Guidance: 3, 4, 5, 6, 7, 8, 9

### **Note:**

*Where ABWOR is granted the standard proceedings code for Civil Legal Aid should be given, but the appropriate ABWOR case code must be used.*

*ABWOR may only be granted where it is available (i.e. where Part IV replaces the provisions in Part I Domestic Proceedings and Magistrates' Courts Act 1978) and the proceedings are in the family proceedings court.*

7.2.1 Legal aid/ABWOR to take proceedings is likely to be granted:

- (a) where the parties are “associated persons” as defined;
- (b) but only if:
  - (i) a warning letter has first been sent (or the circumstances are such that this would not be appropriate), and



- (ii) the police have been notified and have nonetheless failed to provide adequate assistance, having particular regard to the Protection from Harassment Act 1997, (or the circumstances are such that going to the police first would not be appropriate) and a fee paying client of moderate means would be advised to apply to the court for an order in all circumstances of the case; and
- (c) if the respondent has molested the other party and/or a relevant child/children and an order is likely to be considered necessary by the court for the protection of that party or child/children having regard to all the circumstances, including the need to secure the health, safety and well being of the applicant, of another party to the proceedings or of any relevant child; and
- (d) if the conduct complained of took place within the last two to three weeks, or, if earlier, on the particular facts there is likelihood of repetition.

**Note:**

*Emergency legal aid should only be granted to take injunction proceedings where the applicant or relevant child is in imminent danger of significant harm. Significant harm is imminent if there is a real risk that it will occur before a substantive application can be processed and the matter brought before the court.*

7.2.2 Legal aid/ABWOR to take proceedings is unlikely to be granted:

- (a) if the only incidents complained of are of a trivial nature;
- (b) if on the facts the conduct complained of is not likely to be repeated;
- (c) if the other party is under an existing obligation not to molest, for example, is subject to bail conditions, or is remanded in custody. However, where a criminal prosecution (other than under the Protection from Harassment Act 1997) is likely to be finalised shortly but incidents are continuing or are likely to continue and the protection of bail conditions would cease, the grant of an emergency certificate may be justified. This contrasts with an ongoing prosecution and with prosecutions under the Protection from Harassment Act 1997 where the protection of bail conditions/a restraining order is likely to continue;
- (d) if proceedings under the Protection from Harassment Act 1997 would be more appropriate having regard to all the circumstances, including their likely costs/effectiveness;

- (e) if any order obtained is likely to be unenforceable on account of the mental incapacity or minority of the respondent.

7.2.3 Legal aid/ABWOR to defend proceedings is likely to be granted:

- (a) if there are any very serious allegations which are denied wholly or substantially; or
- (b) if there is any question of inability to defend (for example because of mental incapacity or minority).

7.2.4 Legal aid/ABWOR to defend proceedings is unlikely to be granted:

- (a) if the matter could reasonably be dealt with by way of an undertaking, for which representation is not considered necessary. The fact that the court must consider whether to attach a power of arrest where the applicant has used or threatened violence against the applicant or a relevant child does not of itself justify the grant of representation.

7.2.5 Where an order made under Part IV, including a power of arrest, is breached, cover for both the applicant and respondent extends to representation on the consideration of the breach by the court following exercise of the power of arrest. However, cover does not, without a specific amendment, extend to applying for the issue of a warrant of arrest (where a power of arrest has not been attached to the order) nor to representation for either party in contempt of court proceedings. In the event of an application for an amendment relevant factors would be the extent of any alleged breach and the likelihood of success in the proceedings, given all the facts and circumstances of the case.

7.2.6 Guide to Standard Wordings

Standard wordings for proceedings under Part IV Family Law Act 1996 are given in Appendix 1. Limitation/s must be used – see Chapter 2 in Appendix 1.

**7.3 Part IV Family Law Act 1996 – Occupation Orders**  
Relevant Notes for Guidance: 3, 4, 5, 6, 7, 8, 9

**Note:**

*Where ABWOR is granted the standard proceedings code for Civil Legal Aid should be given, but the appropriate ABWOR case code must be used.*



*ABWOR may only be granted where it is available (i.e. where Part IV replaces the provisions in Part I Domestic Proceedings and Magistrates' Courts Act 1978) and the proceedings are in the family proceedings court.*

7.3.1 Legal aid/ABWOR to take proceedings is likely to be granted:

- (a) if the parties and property qualify to be covered by an order, and
- (b) if in addition to the criteria for non-molestation (paragraph 7.2.1) the applicant is in a refuge or temporary accommodation having recently been excluded from the property; and/or
- (c) if an order is likely to be considered necessary by the court having regard to all the circumstances of the case including the “greater harm” test.

7.3.2 Legal aid to take proceedings is unlikely to be granted:

- (a) if the respondent has already left voluntarily, does not wish to return and there are no other issues sufficient to justify the proceedings;
- (b) if the applicant left voluntarily, there is no significant likelihood of risk in returning without the protection of an order and there are no other issues sufficient to justify the proceedings;
- (c) if the applicant has been out of occupation for some time and there are no other issues sufficient to justify the proceedings.

**Note:**

*Emergency legal aid should only be granted to take proceedings for an injunction where the applicant or relevant child is in imminent danger of significant harm. Significant harm is imminent if there is a real risk that it will occur before a substantive application can be processed and the matter brought before the court.*

7.3.3 Legal aid to defend proceedings is likely to be granted if, in addition to the criteria for non-molestation, there has been an ex parte order made with no opportunity for the respondent to contest the issues and in the particular circumstances of the case it would be unreasonable for the order to stand.

**Cross-reference:** see para 7.2.1 re criteria for non-molestation.

7.3.4 Legal aid to defend proceedings is unlikely to be granted

if the respondent is already out of occupation of the property, has no good reason to return and any other issues in the proceedings are insufficient to justify the grant of representation.

7.3.5 Guide to Standard Wordings

Standard wordings for proceedings under Part IV Family Law Act 1996 are given in Appendix 1. Limitation/s must be used – see Chapter 2 in Appendix 1.

**7.4 The Relationship between ABWOR and Civil Legal Aid**

7.4.1 ABWOR, where available, is likely to be granted/refused in the same circumstances as civil legal aid but it is only available where Part IV Family Law Act 1996 directly replaces a previous legal remedy for which ABWOR was itself available under Part I Domestic Proceedings and Magistrates' Courts Act 1978.

7.4.2 Where both ABWOR and civil legal aid are available, civil legal aid or ABWOR may be applied for. Area offices/franchisees will not, however, seek to refuse applications for ABWOR on the basis that civil legal aid should be applied for.

7.4.3 Where both civil legal and ABWOR are available, ABWOR will generally be the choice because it is simpler. However, there are different eligibility and contribution regimes for civil legal aid and ABWOR, and the Board will not force a client to apply for ABWOR if that would lead to higher contributions than civil legal aid. ABWOR is only available for proceedings in the family proceedings court.

**7.5. Protection from Harassment Act 1997**

*Relevant Notes for Guidance: 4, 5, 6, 7*

**Note:** ABWOR is not available.

7.5.1 Legal aid may only be granted by a franchisee in the family/matrimonial category but only where there is a family context (defined by reference to associated persons under Part IV Family Law Act 1996) and only nominal damages/an injunction (as opposed to substantive damages) are sought.

7.5.2 Legal aid is only likely to be granted to take proceedings:

- (a) if a warning letter has first been sent (or the



circumstances are such that this would not be appropriate), and

- (b) the police have been notified and have nonetheless failed to provide adequate assistance having regard to their powers under the Act (or the circumstances are such that going to the police first would not be appropriate) and a fee paying client of moderate means would in all the circumstances be advised to apply to the court for an order;
- (c) if there has been conduct sufficient to constitute harassment/apprehended harassment within the last two to three weeks or, if earlier, on the particular facts there is a likelihood of repetition.

7.5.3 Legal aid to take proceedings is unlikely to be granted:

- (a) if on the facts the conduct complained of is trivial or not likely to be repeated;
- (b) if the other party is under an existing obligation not to molest, for example, is subject to bail conditions, or is remanded in custody or is the subject of a restraining order in criminal proceedings under the Act (unless on the facts the existing obligation is likely to end imminently);
- (c) if in the circumstances of the case other proceedings would be more appropriate e.g. under Part IV Family Law Act 1996;
- (d) if any order obtained is likely to be unenforceable on account of the mental incapacity or minority of the respondent.

**Note:**

*Emergency legal aid should only be granted to take proceedings for an injunction where the applicant or relevant child is in imminent danger of significant harm. Significant harm is imminent if there is a real risk that it will occur before a substantive application can be processed and the matter brought before the court.*

7.5.4 Legal aid to defend proceedings is likely to be granted if:

- (a) there are any very serious allegations denied wholly or substantially; or
- (b) there is any question of inability to defend (for example, because of mental incapacity or minority).

7.5.5 Legal aid to defend proceedings is unlikely to be granted if the matter could reasonably be dealt with by way of an undertaking for which representation is not considered necessary.

## 7.5.6 Guide to Standard Wordings

Standard wordings for proceedings under the Protection from Harassment Act 1997 are given in Appendix 1. Limitation/s must be used – see Chapter 2 in Appendix 1.

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## PERSONAL INJURY

### 6. Protection from Harassment Act 1997

Relevant Notes for Guidance: 4, 5, 6, 7

6.1 Legal aid may not be granted by a franchisee where no or only nominal damages are sought. There is no devolved power in this franchise category to cover applying for/defending proceedings in which only an injunction/nominal damages are being applied for. Disputes between neighbours are not covered by any franchise category.

6.2 Legal aid is only likely to be granted to **pursue proceedings:**

- (a) if a warning letter has first been sent (or the circumstances are such that this would not be appropriate), and
- (b) the police have been notified and have nonetheless failed to provide adequate assistance (or the circumstances are such that going to the police would not be appropriate e.g. because the main concern is the recovery of substantial damages rather than protection of the client), and
- (c) if prima facie liability and causation can be shown, and
- (d) if the value of the claim is above the small claims limit or,
  - although the value falls within the small claims limit, the reference to arbitration has been/is likely to be rescinded or the case has exceptional circumstances, and
  - the amount at issue and likely prospects of success are nonetheless sufficient to justify the likely costs (having regard to the operation of the statutory charge), and
- (e) a fee paying client of moderate means would be advised to take the proceedings in all the circumstances of the case.

6.3 Legal aid is likely to be granted to **defend proceedings:**

- (a) where the value of the claim is above the small claims limit or,
  - although the value falls within the small claims



limit, the reference to arbitration has been/is likely to be rescinded or the case has exceptional circumstances, and

- if the defendant can show that he/she has a prima facie defence.

- 6.4 Legal aid is unlikely to be granted to take proceedings for inter-family disputes unless:
- the particular circumstances justify the grant of legal aid, for example, there have been incidents of serious violence, racial abuse, or serious damage to property.

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## HOUSING

### 5. PROTECTION FROM HARASSMENT ACT 1997

*Note:* ABWOR is not available

- 5.1 Legal aid may only be granted by a franchisee where the proposed proceedings are between a landlord and tenant. Proceedings between tenants and neighbours do not fall within the housing franchise category.

- 5.1.1 Legal aid is only likely to be granted to take proceedings:

- (a) if a warning letter has first been sent (or the circumstances are such that this would not be appropriate), and
- (b) the police have been notified and have nonetheless failed to provide adequate assistance having regard to their powers under the Act (or the circumstances are such that going to the police first would not be appropriate) and a fee paying client of moderate means would in all the circumstances be advised to apply to the court for an order; and
- (c) if prima facie liability and causation can be shown, and
- (d) if the value of any damages claim is above the small claims limit or,
  - although the value falls within the small claims limit, the reference to arbitration has been/is likely to be rescinded or the case has exceptional circumstances, and
  - the amount at issue and likely prospects of success are nonetheless sufficient to justify the likely costs (having regard to the operation of the statutory charge), and
- (e) a fee paying client of moderate means would be advised to take the proceedings in all the circumstances of the case and

- (f) where an injunction is sought, if there has been conduct sufficient to constitute harassment/apprehended harassment within the last two to three weeks or, if earlier, on the particular facts there is a likelihood of repetition.

- 5.1.2 Legal aid to take proceedings is unlikely to be granted:

- (a) if on the facts the conduct complained of is trivial or not likely to be repeated;
- (b) if the other party is under an existing obligation not to molest, for example, is subject to bail conditions, or is remanded in custody or is the subject of a restraining order in criminal proceedings under the Act (unless on the facts the existing obligation is likely to end imminently);
- (c) if in the circumstances of the case other proceedings would be more appropriate e.g. under the Protection from Eviction Act 1977;
- (d) if any order obtained is likely to be unenforceable on account of the mental incapacity or minority of the defendant.

- 5.1.3 Legal aid to defend proceedings is likely to be granted if:

- (a) there are any very serious allegations denied wholly or substantially; or
- (b) there is any question of inability to defend (for example, because of mental incapacity or minority); and
- (c) where there is a claim for damages, the value of the claim is above the small claims limit or,
  - although the value falls within the small claims limit, the reference to arbitration has been/is likely to be rescinded or the case has exceptional circumstances, and
  - if the defendant can show that he/she has a prima facie defence.

- 5.1.4 Legal aid to defend proceedings is unlikely to be granted if the matter could reasonably be dealt with by way of an undertaking for which representation is not considered necessary.

- 5.1.5 Guide to Standard Wordings

Standard wordings for proceedings under the Protection from Harassment Act 1997 are given in Appendix 1. Limitation(s) must be used – see Chapter 2 in Appendix 1.

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# ABWOR for fine and other defaulters in the Magistrates' Court

ABWOR has been made available for those facing proceedings in the Magistrates' Court for fine/other default which are likely to lead to imprisonment (as mentioned in *FOCUS 18*, March 1997). These proceedings fall within the debt and crime franchise categories (in the case of orders in civil or criminal proceedings respectively). The usual ABWOR application form should be used to apply.

In deciding whether ABWOR is likely to be granted the guidance below should be applied.

The following questions should be considered:

1. Is the applicant before the court as a result of a failure:
  - (a) to pay a fine or other sum which he was ordered to pay or
  - (b) to obey an order of the court where such failure is likely to lead to the applicant being at risk of imprisonment?

- 1.1 If "no", the application should be refused as the case is not within the scope of the new regulations. If "yes", go on to the next question.

## Note:

*The Regulations apply equally to civil and criminal proceedings. In criminal cases, such as non-payment of fines ordered on conviction, the applicant has the alternative of applying to the court for a criminal legal aid order, but ABWOR should not be refused simply on the grounds that criminal legal aid is also available.*

2. Could the case be dealt with by the duty solicitor?
  - 2.1 If it appears that the duty solicitor could deal with the case by providing the degree of representation needed by the applicant, ABWOR should normally be refused.
  - 2.2 Clearly if the court in question has no duty solicitor scheme, or if no duty solicitor will be available for the hearing, ABWOR should not be refused on this ground. The courts are being issued with guidance to encourage these cases to be listed at times when the duty solicitor will be available.
  - 2.3 It should be assumed that duty solicitors are experienced in helping people regarding non-payment of fines and assisting people in explaining their financial position to the court or putting forward mitigation for any failure. Therefore ABWOR should only be granted in preference to allowing the duty solicitor to deal with the case if the case is unusual, particularly in the sense that the case raises complicated issues of fact, law or procedure.
  - 2.4 The fact that the applicant may have many debts or complicated finances would not make ABWOR necessary, unless the whole circumstances of the case were so complex that it would not be feasible to expect a duty solicitor to assimilate all the facts to present a necessary defence or mitigation to the court.

- 2.5 ABWOR should generally be granted if the case genuinely raises some new or complex issues of law.
- 2.6 If the case is not suitable for the duty solicitor, consider the next question.
3. Is it in the interests of justice for ABWOR to be granted?
  - 3.1 The interests of justice test is the same as the merits test for criminal legal aid. See the guidance on the test set out at p. 659 Legal Aid Handbook 1997/98. Once the legal and factual complexity of the case has been considered as above, in practice the most important element of the interests of justice test will be the likelihood of imprisonment.
  - 3.2 The mere fact that at the hearing in question the applicant could in theory be committed to prison for non-payment should not automatically lead to the grant of ABWOR. The issue is whether there is a real risk of imprisonment. It is for the solicitor to explain on the application form that there is such a risk. As a general rule a person is unlikely to be committed to prison on the first occasion they are brought before the court for failure to pay a fine or obey an order. Imprisonment will become more likely in cases where there have been a number of appearances, or where the court has issued a clear warning that the applicant is likely to be sent to prison.
  - 3.3 If it is concluded that it is not in the interests of justice for ABWOR to be granted, the application should be refused. Otherwise consider the next question.
4. Is it reasonable in all the circumstances for ABWOR to be granted?
  - 4.1 If it is decided to be in the interests of justice for ABWOR to be granted, it will almost certainly be reasonable in all the circumstances for ABWOR to be granted. However, each case must be considered on its own facts and one cannot identify in advance every possible factor which may be relevant to the reasonableness of the grant.
  - 4.2 For example, in some cases, it may be clear that the applicant is before the court solely because of his deliberate decision not to pay or to obey an order, as opposed to a case where the applicant feels unable to comply or has a legal defence to the allegation against him. If, for example, an applicant was refusing to pay a particular charge solely because he felt on moral grounds that the charge or tax was wrongful, it might not be reasonable for ABWOR to be granted if this would lead to public funds being spent to argue a political or moral point of view rather than a legal defence.
  - 4.3 If the case is not one that can appropriately be dealt with by the duty solicitor, it is in the interests of justice for ABWOR to be granted and there is nothing about the case which shows that it is unreasonable for ABWOR to be granted, the application for approval of ABWOR should be granted.



## Proposed Payment Dates

**T**here are two payment runs for solicitors and counsel each month. The proposed payment dates for the second six months of the 1997/98 financial year are set out below. Please note that these dates are subject to amendment by the Board should it be necessary but, where possible, you will be told of changes in advance.

If you are paid by BACS (Bank Automated Clearing Service) the proposed payment date shown is the date on which you will receive a payment in your bank. For some smaller banks the BACS credit may appear a day later. The proposed payment date will also be the date by which the last of the cheque/remittance advices are despatched from the Financial Services Settlement Section.

Remittance advices are despatched using DX or first class post.

If you are still being paid by cheque, we recommend that you consider changing your payment method to BACS. BACS offers a more efficient way of receiving your payments. It provides payment direct into a bank account while still receiving a remittance advice. This removes the need to handle cheques, unlike paying in across a bank counter. BACS provides immediately cleared funds unlike cheque clearance which can take four to six days. If you require any advice or assistance about

payment by BACS, please contact the Master Index Section by telephone on 0171 813 8626.

Details of the amount due to you may be obtained by contacting either the area office or the Solicitors/Counsel Settlement Section on 0171-813 8625.

But, if you have a query regarding an individual item shown on a remittance advice, you should contact the relevant area office, which authorises and processes all such bills.

### KEEPING US UP TO DATE

Names, addresses, DX, fax and telephone numbers and bank details for BACS payments are held on the Board's Master Index database.

Please send any changes relating to your firm or chambers to the Master Index Section which is located in 85 Gray's Inn Road, London, WC1X 8AA.

## Proposed Payment Dates for October 1997 – March 1998

First Payment date of the Month	Second Payment date of the Month
Monday, 13 October 1997	Thursday, 30 October 1997
Thursday, 13 November 1997	Friday, 28 November 1997
Friday, 12 December 1997	Wednesday, 24 December 1997
Tuesday, 13 January 1998	Wednesday, 28 January 1998
Friday, 13 February 1998	Thursday, 26 February 1998
Friday, 13 March 1998	Monday, 30 March 1998

## Transfer of civil legal aid means assessment update

**A**s part of the Board's assumption of the responsibility for means assessment (see Focus 20), the CLA4 financial application forms series have been revised and renamed as the 'MEANS' series. There is a new explanatory booklet to assist applicants to complete the MEANS I (formerly CLA4A). There is also an additional form (L18) for the self employed.

These forms should be used for applications to the first wave of area offices to take on means assessment (London, Leeds, Chester and Cambridge) from the 6th October 1997. Starter packs of the forms were despatched to the profession in those areas on 10th September 1997. Solicitors will be able to request bulk supplies from area offices upon receipt of those packs.

The profession will be notified of the timetable for the introduction of the new forms at the remaining area offices in due course – in the meantime the existing forms will remain in use at those offices. Members of the profession with any queries can contact Andy Grant, Patrick Reeve or Neil Tyson on 0171-813 1000.

